IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 61930-6-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
MICHAEL EARL LESLIE,	)	Unpublished Opinion
	)	
Appellant.	)	FILED: July 27, 2009

Lau, J. — Michael Leslie appeals his guilty plea convictions for two counts of first degree child molestation and one count of third degree assault of a child. Leslie argues that he did not enter into his plea knowingly, voluntarily, and intelligently because he was misinformed about the applicable community custody range. But his guilty plea statement, when read as a whole, properly informed Leslie that the community custody period begins following the total confinement period and applies up to the statutory maximum. We affirm.

FACTS

On July 12, 2007, Michael Leslie pleaded guilty to two counts of first degree child molestation and one count of third degree assault of a child. At the guilty plea hearing, in response to the court's questions, Leslie agreed that he had read and

reviewed the guilty plea statement with his attorney and that he had no questions about it. Because Leslie indicated that he would be applying for a Special Sexual Offender Sentencing Alternative (SSOSA), the parties agreed to continue sentencing pending the SSOSA evaluation.

On August 16, 2007, the court granted Leslie a temporary release from custody to obtain a SSOSA evaluation. But Leslie failed to return from his temporary release and also failed to appear at his sentencing hearing. The court issued an arrest warrant. And on December 4, 2007, he was arrested in Oregon on the warrant.

Leslie filed a motion to withdraw his guilty plea on March 6, 2008. The motion was based on Leslie's claim that he was not fully informed that he would have to admit having sexual contact with the victim to obtain a SSOSA. The trial court denied the motion.

On June 19, 2008, the trial court sentenced Leslie to 130 months of confinement and a community custody term of "life." On the same day, Leslie filed a notice of appeal from the judgment and sentence.

On August 14, 2008, the trial court entered an agreed order amending the judgment and sentence to clarify that "community custody for counts 1 and 2, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence."

ANALYSIS

Leslie argues that he is entitled to withdraw his guilty plea because he was misinformed about the term of community custody.[1] We disagree.

"Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent." In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). "If a defendant is not apprised of a direct consequence of his plea, the plea is considered involuntary." In re Pers. Restraint of Bradley, 165 Wn.2d 934, 939, 205 P.3d 123 (2009). "The maximum sentence and term of mandatory community placement are among such direct consequences of a plea." State v. Knotek, 136 Wn. App. 412, 423, 149 P.3d 676 (2006). "The State bears the burden of proving the validity of a guilty plea." State v. Ross, 129 Wn.2d 279, 287, 916 P.2d 405 (1996).

Leslie asserts that the guilty plea statement misinformed him that each of the child molestation counts had a community custody range of "life" when, in fact, the proper term was from the point of earned early release to life. RCW 9.94A.712(5).[2]

But the guilty plea statement also included standard language that advised Leslie his conviction would result in community custody for the period of earned early release up to the statutory maximum.

> Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside of the standard range if an exceptional sentence is appropriate. . . . In

[1] Leslie did not challenge the voluntariness of his guilty plea on this basis at the trial court below. The State, however, concedes that "[a]lleged involuntariness of a guilty plea is the type of constitutional error that a defendant can raise for the first time on appeal." Knotek, 136 Wn. App. at 422–23.

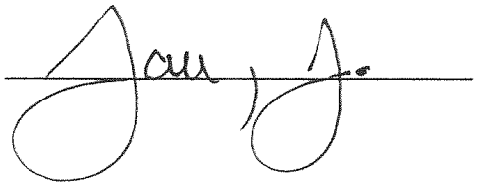
[2] RCW 9.94A.712(5) states, "When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence."

> addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence.

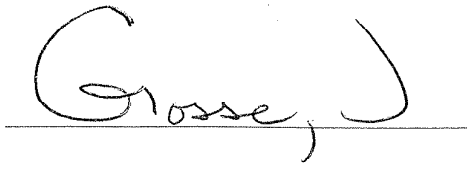
(Emphasis added.)

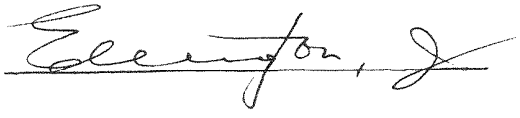
"'Community custody' means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to . . . RCW 9.94A.700 through 9.94A.715 . . . served in the community subject to controls placed on the offender's movement and activities by the department." RCW 9.94A.030(5).

The guilty plea statement correctly informed Leslie that his period of community custody would be the period of time after completing total confinement up to the statutory maximum of his sentence under RCW 9.94A.712. It also indicated that the standard range sentence was 98 to 130 months' confinement on the two child molestation charges, with a statutory maximum term of life. When read as a whole, the guilty plea statement correctly advised Leslie that he was subject to community custody from the end of total confinement up to the statutory maximum.[3] We affirm.



WE CONCUR:





[3] The trial court's subsequent order modifying the judgment and sentence to impose the correct community custody term is immaterial to the issue of whether the guilty plea form properly advised Leslie of the terms of his sentence.